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September 27, 1947

SUMMARY MINUTES

Sixth Meetingin Negotiations Between the United States and Italian Delegations for a Treaty of Friendship, Commerce and Navigation

DEPARTMENT OF STATE A/CDC/MR
REVIEWED BY AJ SMD DATE 9/19/13
RDS or XD. EXT. DATE
TS AUTH. Participants: EXEMPTION(S)
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Approved:

For the United States: Messrs. Ainsworth, Setser.

For Italy: Messrs. Simonis, La Rosa, Sorrentino, Ippolito, De Rossi, Maresca, Campailla, Timarco, Ghelli.

Time: 10:00 A.M.. Saturday, September 27, 1947.

Place: Palazzo Chigi.

The negotiators proceeded to the consideration of the draft treaty article by article.

Article XVI

The Italian negotiators stated that they had one possible objection to paragraph 1 of this article. They stated that in the laws and regulations governing internal distribution, Italy in certain cases made a distinction between imported products and domestic products. The distribution of many domestic products is uncontrolled or only partially controlled because the enforcement of controls is difficult in as much as many articles are produced by families or other small industrial units. The distribution of imports is, however, generally controlled by the Government because the controls are relatively easy to enforce. Domestic iron production is, for example, half free, and half reserved for Government projects. In certain cases, non-Governmental agencies are licensed to control the distribution of certain imported articles. The Italian negotiators stated that they were in some doubt as to whether this system of controls might not be in conflict with the proposed treaty rule, and that they would like to ask the American Government for an interpretation of the provision regarding sale, distribution and use in paragraph 1 as it might affect their system of controls. If there is a conflict with the treaty rule,

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they would want to propose a protocol provision which would permit them to retain their system of controls.

Article XVII

After consideration of the three paragraphs of this article, the Italian delegation stated that they found it unobjectionable. They added, however, that this was only a provisional opinion and that they wished to give the provision further consideration when their Treasury experts could be present. They expressed the view, also, that it is not entirely clear that sub-paragraph (e), paragraph 1 of Article XXIV, which relates to the subject matter of Article XVII, refers to measures which either party might adopt under any and all of the Articles of Agreement of the International Monetary Fund.

The American negotiators stated that the term "the Articles of Agreement thereof" as used in sub-paragraph (e), paragraph 1, Article XXIV was intended to refer to all articles in the Articles of Agreement of the International Monetary Fund, including Articles VII and XIV thereof.

Articles V and VII

The discussion of the foreign exchange (capital transfer) provision in paragraph 2 of Article V and paragraph 2 of Article VII was resumed. The Italian negotiators stated that they thought that these provisions would be entirely unacceptable because it is an established principle of the Italian exchange control laws that the rate of exchange shall be determined as of the date at which the exchange transaction is made. They said that if Italy made a commitment on these matters to the United States, other nations would be able to claim the same treatment under most-favored-nation clauses. They added that if an exception were made for one type of transaction, the Government would be under continual pressure to make similar exceptions for other types of transactions.

With respect to Article VII, they said the rule would result in speculation and pretended legacies by Italians to American citizens, whereby, through collusion, Italians could obtain a higher rate of exchange than the ordinary legal rate. The American negotiators pointed out that the rule in Article VII would apply only in the case of a legal bar to inheritance of immovables. They inquired whether there is in fact any Italian law at present which would debar an alien from taking immovables as heir or devisee. The Italian negotiators replied that there is no such law, and that in such matters there is in Italy no distinction between aliens and nationals.

With respect

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With respect to paragraph 2 of Article V, the Italian negotiators stated that condemnation and expropriation of private property for public use occurs very rarely in Italy, and that, therefore, this provision could be of importance only in case of a nationalization program; and that the present Italian Government has no intention of entering upon such a program. They said that if the American Government anticipated a future regime adopting such a program, they must also anticipate that such a regime would be without amicable sentiments toward America, and that it could denounce the treaty.

The American negotiators stated that a nationalization program in a country did not necessarily imply unfriendly relations with America, and that experience showed that governments which were not entirely friendly were frequently indisposed to denounce their treaty obligations. They stated that the American viewpoint in the provision under discussion is this: it is desirable from the standpoint of both governments to encourage private capital to assume as much as possible of the burden of reconstruction and development throughout the world. One of the conditions that prevents the flow of private capital between nations is fear of the present broad tendency toward nationalization of industry. Most industrial capital is highly specialized, and it is unjust to attempt, after nationalization of one industry, to force reinvestment within the country in some other industry. The American view is that foreign capital should in such cases be allowed to be freely withdrawn for reinvestment elsewhere. Nationalization programs are frequently accompanied by some confusion, and the nationalizing country's currency may be allowed to depreciate in the period between the taking of the property and the completion of arrangements to pay compensation. The provision concerning the conversion of currency received as compensation by expropriated persons, including the rule for the determination of the rate of exchange, is considered to be an essential part of the assurances proposed with regard to the prompt payment of just and effective compensation.

The Italian negotiators repeated that the rule proposed was entirely at variance with Italian policy regarding foreign exchange transactions in that it implied an obligation of exchange guarantee by the Italian Government. The American negotiators stated that they did not consider the point at issue to be merely a matter of exchange policy, but a matter of property protection and investment policy.

The Italian negotiators then pointed out that some American property in Italy represented dollar investments, and some represented lire investments, and that they could not consider as entirely fair a rule on withdrawal which made no distinction between these types of investment. They added that in referring to a possible modification of the draft provision, they were engaging wholly in informal discussions, since they were without authority to make any such proposals.

The American

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The American negotiators stated that they would have no objection to discussing on an informal basis the desirability of making a distinction between the two types of investment. They referred to the difficulty of formulating a workable rule for making such a distinction, however, without imposing an onerous requirement as to proof upon the expropriated person. The Italian negotiators suggested that the distinction could be made on the basis of residence, that if the investor resided in America it could be assumed that he made a dollar investment, and if he resided in Italy, the assumption could be that the investment was in lire. The American negotiators were of the opinion that Americans resident in Italy had made dollar investments. Other methods of distinguishing between the two types of investment were discussed, including reliance upon bank records, and using the date of imposition of Italian exchange controls as the dividing point.

With respect to the contention of the Italian delegation that other nations would claim the same privileges under most-favored-nation clauses and that if exchange insurance were undertaken by the Italian Government for cases of expropriation, a precedent would be set for similar claims with respect to other types of transactions, the American negotiators expressed the view that, with respect to the first point, consideration could be given to including a reciprocity provision in the treaty, and, with respect to the second, that the treaty provision made it clear that special treatment was being provided for a special type of case.

The Italian delegation then summed up its views of the paragraph as follows:

1. The Italian Government could undertake to make prompt payment of just and effective compensation.

2. Admission of the compensation to transfer would have to be made to depend upon the type of account. If the accounts were transferable, dollars could be provided; if not, there could be no transfer.

3. There was very considerable doubt whether their Government could undertake the exchange insurance provided for in the treaty proposal.

The Italian negotiators also stated that there would be some difficulty about the phrase "upon the most favorable terms applicable to such currency". Since Italy has a system of multiple exchange rates, they felt that it would be necessary to qualify the provision by using some such phrase as "applicable to capital transfers".

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transfers". The American negotiators suggested that such a provision would make transfers impossible if the control system should generally forbid such transfers. The Italian negotiators stated, however, that there would be a rate applicable even if such transfers were generally forbidden.

It was agreed that this subject should be further discussed at a later meeting.

Article XVIII

The Italian delegation stated that this article was, in general, acceptable. They stated that they were in dome doubt as to how the rule of paragraph 3 would affect commodity agreements such as an agreement between Italy and Spain for supplying the latter with mercury. The American negotiators stated that it would depend upon the detailed provisions of the Italo-Spanish agreement. If there were a monopoly involved, the rule of paragraph 1 would apply. The Italian negotiators stated that they would give further study to paragraph 3, and would be prepared to discuss it at a later meeting.

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September 29, 1947.

SUMMARY MINUTES

Seventh Meeting in Negotiations Between the United States and Italian Delegations for a Treaty of Friendship, Commerce and Navigation

Approved.

Participants:

For the United States: Messrs. Ainsworth, Setser

For Italy: Messrs. Simonis, La Rosa, Ippolito, De Rossi, Maresca

Time: 10:00 A.M. Monday, September 29, 1947.

Place: Palazzo Chigi

Article XIX

The Italian negotiators stated that they had no objection to this Article.

Article XX

The Italian negotiators stated that paragraphs 1, 2, 4, and 5 of this Article were acceptable to them. With respect to paragraph 3, they wished to consider whether their laws and regulations regarding the transportation of emigrants might not be at variance with the proposed treaty rule. They stated that the transportation of emigrants is very carefully regulated in Italy. Emigrants may be transported only in vessels properly adapted to the purpose, both from the standpoint of the physical well-being and the morale of the passengers. The Government issues patente di vettore to carriers which have qualified under the regulations. Emigrants travel under a special passport, and the regulations apply only to persons carrying such passports.

The American negotiators stated that, in their opinion, the paragraph in question could not be construed as preventing the enforcement of regulations regarding the transportation of emigrants. They added that regulations regarding the carriage of immigrants were imposed by law in the United States. They said that as long as such regulations were not implemented in such a manner as to favor national vessels

over the vessels

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over the vessels of the other party to the treaty they could not be considered as violating the rule of the paragraph. As to whether or not the Italian regulations were discriminatory, the Italian officials would be the best qualified to determine.

The Italian negotiators stated that their regulations did not make a distinction between vessels of national and foreign registry.

Article XXI

The Italian delegation stated that it had no objection to this Article.

Article XXII

The Italian negotiators stated that they had no objection to paragraph 1. With respect to paragraph 2, however, they said that their Government could not accord most-favored-nation treatment with regard to the coasting trade and inland navigation. They said that the Government had a firm policy on excluding foreigners from cabotage. It could not, however, include a most-favored-nation provision in the treaty as a matter of form, for the reason that there are a number of old treaties in effect with a number of countries (Honduras, 1868; Norway, 1862; Sweden, 1862; Tunis, 1866; Denmark 1864; and Holland, 1863) which grant the right of participation in Italian cabotage. As far as is known, they said, the vessels of those countries have never exercised their privileges. They stated also that Italy wished to remain free to make agreements, on the basis of formal reciprocity, with countries with no important merchant shipping, such as Jugoslavia and Albania, which would permit Italian vessels to engage in cabotage in those countries. They proposed that that part of paragraph 2 beginning with the words "provided, however", and ending with the words "any third country" be deleted.

The American negotiators stated that they would refer this matter to their Government.

Article XXIII

The Italian negotiators stated that they wished to raise questions with regard to two points in this article, which was generally acceptable. Italy, they said, enforces special regulations with regard to the transit of stateless persons, with a view to preventing such persons from remaining in Italy. Transit permits are usually granted, but may be refused. They suggested that their problem could be solved by an amendment of item (a) of this article in such a way as to limit the rule of freedom of transit to "persons, whether nationals of the other High Contracting Party or nationals of any third country,

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together

together with their baggage, directly or indirectly coming from or going to the territories of such other High Contracting Party". They also inquired whether the provisions of this Article would require Italy to grant transit privileges to aliens who had previously been expelled from Italy for reasons of public order. They also inquired whether the exception regarding "police laws", in paragraph 2 (d) of Article XXIV could not be construed as permitting the enforcement of regulations for denial of freedom of transit in certain cases to stateless persons and persons previously expelled for reasons of public order. The American negotiators stated that they had no instructions on these points and would consult their Government.

Article XXIV

Paragraph 1 - The Italian negotiators stated that their Government would wish to add to this paragraph a provision permitting the enforcement of measures regarding the exportation of objects of artistic and historical value. The American negotiators stated that such a provision had been included in some treaties and agreements of the United States, and referred to a possible exception with regard to "the exportation of national treasures of historical, archeological or artistic value." The Italian delegation was of the opinion that the word "treasures", when translated into Italian, would seem to limit the exception to objects of the highest value, whereas they would want to regulate or prohibit the exportation of other objects as well. The American negotiators agreed to refer the subject of the suggested exception to their Government.

Paragraph 1 (e). The Italian negotiators stated that they might wish to propose the inclusion in this sub-paragraph of some reference to the provision which they had previously proposed to insert in the Additional Protocol; i.e., a commitment by the two parties to undertake to negotiate, under certain circumstances, a bilateral accord to replace certain provisions of the Articles of agreement of the International Monetary Fund.

The Italian negotiators stated that they had no objection to any of the provisions of paragraph 2 of this article.

With respect to paragraph 3 (b), they stated that their Government objected to the phrase "after consultation with the other High Contracting Party" as seeming to require the consent of such other party to the entry of one party into a customs union. The American negotiators stated that they did not understand the provision as requiring consent, but that the position of their Government was that the entry of one party into a customs union could affect the commercial interests of the other party in such an important way that it would be entitled to be consulted. The Italian negotiators stated that they agreed that consideration of the other party's interests should be

should be required, and stated that they would have no objection to a clause providing for notification of the other party or providing for an exchange of views.

The Italian negotiators referred to the fact that they had proposed at an earlier meeting the modification of subparagraph 3(d) to include exceptions for the State of Vatican City and for the Italian colonies.

The Italian negotiators stated that their Government had no objection to paragraph 4 of this Article. With regard to paragraph 5, however, they said that they considered the phrase "directly or indirectly owned or controlled" to be so indefinite in meaning as to make the proposed rule unworkable. There were many ways, they said, by which a corporation could be indirectly influenced or controlled by aliens or alien corporations, and that under the proposed rule, any of these could be put forward by one party as a reason for denying to the corporations of the other the privileges stipulated in the treaty. The American negotiators said that they had been authorized by their Government to propose the following revised draft of paragraph 5:

Each High Contracting Party reserves the right to deny any of the rights and privileges accorded by this Treaty to any corporation or association created or organized under the laws and regulations of the other High Contracting Party in the ownership or direction of which nationals of any third country or countries have directly or indirectly a controlling interest.

The Italian negotiators stated that they considered this an improved version and believed that it would be acceptable to their Government.

Article XXV

The Italian negotiators stated that this Article was acceptable to them.

Article XXVI

The Italian negotiators stated that this Article was acceptable to them.

Article XXVII

The Italian negotiators stated that their Government objected strongly to this Article. They said that they did not feel that it was necessary, and that it could be expected to cause criticism of the treaty in Italy. The American negotiators stated that it had been included only because it was believed that some exception was necessary from the purely legal standpoint. They pointed out, as

an example

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an example, that the commercial treaty rule regarding compensation for expropriated property differed from the compensation provisions of the treaty of peace. The Italian negotiators then stated that they thought that the points of difference could adequately be covered by providing that the commercial treaty should not supersede the provisions of the Lombardo agreements signed at Washington on August 14, 1947. They stated also, that, if the American Government felt that an exception was necessary for the treaty of peace, the reference should be included in an article asserting that the purpose of the commercial treaty was to maintain eternal peace and friendship, and that it should state that the commercial treaty was not intended to supersede such provisions of the peace treaty as could not be modified.

The American negotiators stated that they would consult their Government with regard to the possibility of redrafting the article in such a way as to emphasize the friendly purposes of the commercial treaty.

Final Clauses

The Italian delegation stated that it would wish to include in the final paragraph of the treaty a phrase making clear that the Italian and English versions of the treaty as finally concluded should be of equal authenticity. The American negotiators stated that they would request their Government to authorize the insertion of a phrase along the lines of the Italian suggestion.

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